

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 408 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RANIYABHAI SAVIYABHAI

Versus

STATE OF GUJARAT

Appearance:

MR JV DESAI for Petitioner
MR KP RAVAL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA
Date of decision: 14/10/97

ORAL JUDGEMENT

The appellant is original accused of Sessions Case No.198 of 1988. He was tried by the ld. Addl. Sessions Judge, Surat, for offence under Section 333 of IPC. The case of the prosecution was that, on 5.7.1988 at about 1.30 p.m., when the Head Constable Chintamani Ratan of Kakrapar Police Station, had gone to serve

summons at village Bedkuva Patiya of Mandvi Taluka and District Surat, the accused attacked him with the handle of umbrella and caused fracture of right humerus.

In order to prove the case, the prosecution has examined the said injured complainant at Exh.7 and eye witness Hasmukhbhai at Exh.16, page 24. The Doctor is examined at Exh.17, page 26 and the certificate is at Exh.27.

The fact that the complainant had suffered fracture of right humerus with dislocation of right shoulder is clearly established. With regard to the involvement of the accused, the complainant and the said eye witness Hasmukhbhai clearly deposed in line with the prosecution case.

In cross-examination of these witnesses, no enmity is suggested nor is it remotely stated that the accused was not in any way involved in the incident.

No doubt, Hasmukhbhai does say that the complainant should not enter into any discussion with the accused as he is either short-tempered or is having adequate control over himself. The description given in Gujarati is roughly translated to me as of a mad-like person.

In the further statement of the accused under Section 313 of Code of Criminal Procedure, no such plea is taken and instead all the circumstances appearing against him when put by the ld. trial Court Judge, have been denied one after the other.

In this background, except for pointing out that the complaint has been filed almost 48 hours after the incident, no other circumstance has been brought out by ld. Advocate Shri Desai. With regard to the said late filing of the complaint, whatever explanation that the complainant could give is to be found at page 14, Exh.8. It is to the effect that, he was suffering from severe pain and therefore, was confined to hospital and there is delay in filing the complaint. This fact is nowhere corroborated by said Doctor Mahirvani at Exh.17 who says that the complainant was in his hospital as an indoor patient from 6.7.1988 to 18.7.1988.

Three suggestions were made to the complainant on behalf of the defence during his cross-examination. One was that, he was fallen down; the other was that, he has asked for wicker basket which the accused was having to

earn his livelihood and the third one was that, on account of rains, he has asked for an umbrella from the accused. The accused does not refer to any of these in his further statement.

That apart, so far as the suggestion of falling down is concerned, Doctor does say in his deposition at Exh.17 that the complainant had fallen down from the bicycle initially, which subsequently was changed on the next date to the effect that he was beaten.

However, looking to the said deposition of said Hasmukhbhai which clearly says that the accused had given blow with the handle of umbrella and that exactly is the story of the complainant. The order of conviction passed by the trial Court, therefore, in my opinion, is not required to be interfered with.

The trial Court had awarded RI of four years and fine of Rs.250/- and in default to undergo further RI of six months. Ld. Advocate Shri Desai, therefore, alternatively, argued that the sentence be reduced. However, looking to the fact that, if the Head Constable on duty is dealt with in this manner, there is no reason to reduce the sentence either.

The appeal is, therefore, dismissed. The appellant-accused shall surrender to his bail within a period of two weeks from today.

sreeram.